IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1848 OF 2007

Smt. Jaidevi Ganesh Bind & Ors. ...Appellants
Vs.
Union of India ...Respondent

Mr. P.M. Mokashi, Advocate for Appellants
Mr. P.J. Pandian for Respondent

CORAM: SMT.ROSHAN DALVI,J.
DATED: 29TH JUNE, 2007

ORAL JUDGMENT.

1. The heirs and legal representatives of the deceased Railway Porter filed their claim before the learned Commissioner for Workmen's Compensation and Judge, First Labour Court, Mumbai, who held that the deceased was not a workman in the impugned judgment dated 10th August, 2006.

2. The learned Commissioner and Judge in the impugned judgment has held that was not a licensed Porter.

3. That Judgment is challenged in this Appeal.

4. The substantial questions of law that arises in this Appeal are:

(i) Whether a railway Porter/Hamal is a workman under Section 2(1)(n)(i) of Workmen's Compensation Act r.w. Section 2(34) of the Indian Railways Act, 1989 ?

(ii) Whether being run over by a train perse shows death in the course of employment?

(iii) How is a license receipt issued by the Central railway required to be proved in evidence ?

(iv) How is a licensee with the Central Railway required to be proved in evidence ?

5. The entire record is produced before this Court. Hence, this Appeal is being disposed off at the admission stage itself.

6. The Predecessor in title of the Appellants (the deceased) died in an accident at Vidhyavihar Railway Station, Mumbai. He was run over by a passing local train. Only suburban trans halt at Vidhyavihar Railway Station – the main line

and other trains do not halt.

7. It is contended on behalf of the Appellants that the deceased was under overall supervision of the Assistant Station Master of Vidhyavihar Railway Station, attended to specified work of handling passengers luggage, did the work at the direction of the Station Master, charged only notified rates in handling luggage, paid license fees, was issued uniform, badge and buckle, received free medical treatment and was consequently the workman of Central Railway. Nothing is produced to substantiate such evidence. Similar evidence, without any substantiating documents, is led of a colleague of the deceased. The supervision over them is not shown by any documentary evidence including signing of a muster by either of them. Even the medical treatment that they claim to have received from the Government or Municipal Hospital, paid or reimbursed by Central Railway is not shown. Hence, no instance of being a workman is shown. The cross examination of Appellant No.1 shows that they were given a family pass for going to the native place as well as medical papers for the medical treatment undertaken by them. None of these documents were also produced.

8. The entire evidence does not show any contract of employment. The deceased was, therefore, not a workman

as contemplated under Section 2(1)(n)(i) of the Workmen's Compensation Act r.w. Section 2(34) of the Railways Act.

9. The deceased was run over by a train. There is nothing to show that he was carrying out any work on behalf of the Railways at the relevant time. He is, therefore, not shown to have died by an accident arising out of or in the course of his employment.

10. Upon the claim of the Appellants, as the heirs and legal representatives of the deceased, that he was a licensed Porter they have produced one money receipt of the Commercial Department bearing No.611145 and a badge showing :-

"Licensed Porter
Vidhyavihar Railway Station
Central Railway.

11. They contend that the receipt is in respect of license fee for the year 2004 paid by the deceased to Central Railway since he was a licensed Porter and that such a receipt, evidences that he is a licensed Porter of Central Railway. The badge produced by him is stated to have been on his person at the time of his accident as a part of his uniform. An inquest panchanama made after his death, bears reference to such a badge as well as the red-shirt worn by the

deceased which is claimed to be the uniform of licensed Porter at the Railway station of the Central Railway.

12. The Respondents have denied that he was a licensed Porter. They claim that at Vidhyavihar Railway Station where only the suburban trains halted, there was no necessity of providing licensed Porters since no luggage of passengers was required to be carried. They relied upon two letters of the Station Master (CNC) making a request for providing licensed Porters even after the date of the accident.

13. Both the parties relied upon the license receipt for its interpretation. The Receipt No.611145 dated 19th July, 2004 is issued as a money receipt by the Commercial Department of the Central Railway. It is issued in the name of the deceased. The print of the receipt shows that it is meant for freight carried by Railways. It refers to particulars of description of goods, invoice number and date, station to and from which the goods have to be transported, the railway receipt number of the amount to be filled in. Such money receipts issued by the Commercial Department would not be used as receipts for payment of license fee. The receipt is signed by the In-charge of Vidhyavihar Railway Station.

14. How the receipt came to be issued in the normal course of conduct of Central Railway has not been shown. The Respondents have not been called upon to produce the original counter foil book containing the carbon copies or the counter foils of such receipt. Only such evidence would have shown that it was issued in the normal course, amongst other such receipts on the date on which it is shown to be issued.

15. Strangely the Appellants have examined a colleague of the deceased who is stated to be another such Porter/Hamal who has produced a similar such receipt bearing No.611144 issued by the Commercial Department of the Central Railway on the same day. He was issued buckle No.2 (whereas the deceased was issued buckle No.1). He has produced receipt bearing the immediate consecutive number on the same day, signed by the same authority and showing the same particulars in place of the particulars required for the freight carried by Railways.

16. Neither the Appellants nor their witness, the colleague of the deceased produced the license, if any, executed by the Central Railway with them. They also did not produce any previous years' receipt. They have deposed in their evidence that all their documents have been destroyed in the rain.

Hence, only these two receipts issued on a single day less than 3 months prior to the death of the deceased survived the heavy rains. Though the Appellants have not shown how that happened, the witness examined on behalf of them has deposed that, that was because he kept his receipt with his daughter !

17. The Appellant also examined the Head Clerk at Vidhyavihar Railway Station, who served at the ticket counter of the station and issued memos in accident cases. He signed these receipts prepared by the CNC of the station. He deposed that he has no personal knowledge whether the receipt was made for license fee or not. He also deposed that the deceased was working as a station Hamal. It can be seen that though the execution of a single receipt is sought to be shown by examining the person who signed the receipt, his evidence does not show the truth of the contents of the document, since he had no knowledge whether it was made for license fee or not. The prime requirement of proving that document by direct evidence as laid down in the case of Omprakash Berlia Vs. Unit Trust of India reported in AIR 1983 Bom 1 has not been fulfilled. In the face of the denial by the Respondents that such a receipt could have been issued as a license fee paid by the deceased, it becomes imperative that the issue of receipt is shown to be in the

normal course of conduct and business of Central Railway. That could only be by calling upon the Central railway to produce the counter foil receipt book or the carbon copy of the receipt book to show how, amongst other such transactions, the license fee was accepted by Central Railway pursuant to a license agreement between the Central Railway and the Porter.

18. The Respondents have led evidence that there was no post of licensed Porter at Vidhyavihar Railway Station. Hamals who were not licensed were operating at that station. In case of accident the station-in-charge was permitted to avail of services of any person immediately available. That would be casual nature of work. Those persons would be paid for the work done. There was no relationship of employer and employee between them.

19. The Respondents have produced through their witness two letters dated 29th November, 2004 and 27th December, 2005 which are written after the date of the death of the deceased making a request for providing licensed Porters at Vidhyavihar Railway Station. These letters show that 4 persons were working at Vidhyavihar station in accident cases or run-over cases. But the Railway had not engaged them as licensed Porters. That witness did not know whether

the deceased or his colleague who deposed on his behalf were two amongst these 4 persons.

20. No license in favour of the deceased can be implied by production of a single receipt for license fees in the face of the denial of the Respondents that such a receipt was issued. The two consecutive numbers of the receipts which are claimed to be receipts for payment of license and which are issued less than 3 months before the date of the death of the deceased without any further particulars and since they have been left unproved as to the truth of the contents contained therein, cannot also be read in evidence.

21. The Appellants did produce the original badge of licensed Porter No.1 at Vidhyavihar Railway Station. Such a badge is seen to have been found on his person after his death and a mention of it is made in the inquest panchanama. The badge, however, does not show that it belonged only to the deceased. In view of the defence of the Central Railway that there were no licensed Porters at Vidhyavihar Railway Station since no main line trains halted there, the issue of such a badge remains unexplained. However, a mere badge also cannot impute a license. No particulars of the license are given. For how many years he remained the licensed Porter is not stated. When the license was executed is not

shown. Any such similar license executed by any other licensed Porter is also not produced. His colleague who has been examined has been in the same shoes. The disputed fact about the execution of the license cannot be stated to be proved by mere production of the aforesaid two documents. For such proof, the execution of the license itself is required to be proved either by direct or secondary evidence. No such exercise is undertaken. Hence, the license remains unproved.

22. No compensation is, therefore, payable by the Respondents. The learned Commissioner and Judge has rightly considered the issue in the light of the oral as well as documentary evidence produced before him. The Judgment does not suffer from any infirmity. The Appeal is dismissed. No order as to costs.

(SMT. ROSHAN DALVI, J.)